THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 32 of 2000

DATE: 08-10-2007

Between :

Akkineni Dhana Koteswara Rao and 5 others

… Petitioners

And

Settlement Officer,
Eluru, West Godavari District and 3 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 32 of 2000

ORDER:

This writ petition is filed seeking a mandamus declaring the order of the third respondent-Commissioner, Survey, Settlements and Land Records, A.P., Hyderabad, dated 5.10.1998 as arbitrary and illegal.

The facts, in brief, are as under:

The petitioner herein claims title and possession in respect of Ac.18.35 cents of land including a tank covering Ac.6.72 cents situated in Sy.No.87 of Pothureddipalli Village of Nuzvid Mandal having purchased the same along with one Ch. Mallikarjunudu under a registered sale deed dated
11-06-1935. It is claimed that the petitioner's family has been using the water from the tank for the purpose of irrigating the rest of the land situated in Sy.No.87.

While so, Pothureddipalli was taken over by the Government under the provisions of Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari Act, 1948 (for short 'the Act') by notification dated 01-07-1959. In the resurvey conducted thereafter, it appears that the tank was shown as situated in R.S.No.322 and it was classified as 'tank poramboke' in the settlement records. Consequently, the petition made by the petitioner and the co-owner Mallikarjunudu for grant of ryotwari patta under Section 11(a) of the Act, in respect of the said tank was rejected by the Settlement Officer, Eluru by order

dated
17-11-1976. Aggrieved by the same, a revision petition was filed before the Director of Settlement, which was allowed and remanded for re-enquiry. Pursuant thereto, when the matter was taken up before the Settlement Officer, the petitioner got himself examined as P.W.1 and filed the registered sale deed dated 11-06-1935 as Ex.P.1. He also produced the registered mortgage deed dated 24-06-1929 executed by his vendor in favour of one Adidam Venkamma, which also reflected the specific boundaries of the land purchased under Ex.P.1 registered sale deed. In both the said documents, the tank in question covering an extent of Ac.6.72 cents was included. On appreciation of the said evidence and after conducting a personal inspection of the land in question, the Settlement Officer recorded a finding that the land claimed by the petitioner was a 'kunta', lying within the boundaries of their patta land. It was also found that the said 'kunta' was being used by the petitioner for irrigation purposes and it was not used for communal purpose. Accordingly, the Settlement Officer, by order dated 20.11.1980 allowed the claim petition holding that the petitioner was entitled for ryotwari patta for the said land under Section 11(a) of the Act.

Against the said order, the then Tahsildar, Nuzvid, subsequently designated as Mandal Revenue Officer, filed a revision petition before the second respondent-Director of Settlements. The said revision petition was allowed by order dated 18-07-1996 holding that the tank described in Exs.P.1 and P.2 was not the same tank, which the petitioner herein was claiming but it was a tank poramboke and thus non-ryoti in nature. Accordingly, the patta granted by the Settlement Officer was set aside. Aggrieved by the said order, the petitioner filed a further revision before the Commissioner, Survey, Settlements and Land Records. However, the same was dismissed by order dated 05-

10-1998 confirming the order of the Director of Settlements. Hence, this writ petition.

A counter-affidavit has been filed by the Mandal Revenue Officer, Nuzvid, on behalf of the respondents stating that the conclusion of the Director of Settlements and the Commissioner of Survey, Settlements and Land Records that the land in question is not ryoti land is in accordance with law and does not warrant interference.

I have heard the learned counsel for the petitioner as well as learned Government Pleader appearing for the respondents and perused the material on record.

For the purpose of grant of ryotwari patta under Section 11(a) of the Act, it is to be established that the land in question is a ryoti land and that the same is included in the holding of the ryot immediately before the notified date.

In the case on hand, the estate was taken over by the Government by notification dated 01-07-1959. Therefore, the petitioner who claimed a ryotwari patta is required to establish his possession prior to 01-07-1959 apart from establishing that the land in question is a ryoti land. For the said purpose, the petitioner produced Exs.P.1 and P.2, which are the certified copies of the registered sale deed of the year 1935 and the mortgage bond of the year 1929 before the Primary Authority-Settlement Officer.

The authenticity of the said documents is not in dispute and the Settlement Officer after due enquiry recorded a specific finding that the recitals in Exs.P.1 and P.2 revealed that a tank was in existence in the patta land of the petitioner as long back as in the year 1929. Having taken into consideration the printed village plan of Pothureddipalli village of the year 1890, which was marked as Ex.P.3, the Settlement Officer also held that since Ex.P3 did not reveal any tank, the same must have been excavated subsequently between the years 1890 and 1929 by the petitioner's

predecessors in title in their patta lands. Though the said land was classified in the Settlement account as 'tank poramboke', the Settlement Officer, on appreciation of Exs.P-1 to P-3 documents recorded a finding that it was a private tank excavated in the patta lands of the ryots and that the nature of the land continued to be ryoti. It is also relevant to note that the findings recorded by the Primary Authority were based on his personal inspection of the land in question. However, the 2nd respondent - Director of Settlements set aside the said finding, on the ground that it was classified as 'tank poramboke' in the revenue accounts. Accordingly, it was concluded by the Director of Settlements that the schedule land was not part of the holding of the claimants and that being a tank poramboke, it was non-ryoti in nature. The said findings were confirmed in toto by the 3rd respondent – Commissioner.

As noted above, both the respondents 2 and 3 disallowed the claim of the petitioner only on the ground that the land in question was classified as tank poramboke meant for communal use.

However, the material on record shows that except the entries in Revenue accounts, the said conclusion of the respondents 2 and 3 was not supported by any other evidence.

On the other hand, the finding recorded by the Primary Authority was supported by Exs.P.1 to P.3 – documents as well as the observations made by him in his personal inspection.

While considering an identical question, a Division Bench of High Court of Madras in VENKATARATNAM v. SECY. OF STATE[1] allowed a Letters Patent Appeal holding that the word "Poramboke" is used in several senses and that merely the tank is referred in Survey & Settlement Records as patta it cannot be inferred that it belongs to Government. The Division Bench also observed that it would be far fetched to hold that because a tank

is called a village tank, the villagers necessarily own it.

In the light of the law laid down in the above decision, it is clear that the mere fact that the land in question was described as 'tank poramboke' in the settlement accounts cannot be taken as conclusive to hold that the land in question was non-ryoti.

In the circumstances, I am of the opinion that the respondents 2 and 3 were not justified in setting aside the well considered order of the 1st respondent.

Accordingly, the orders passed by the respondents 2 and 3 being erroneous are hereby set aside and the writ petition is disposed of upholding the order passed by the first respondent. No costs.

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G. ROHINI, J

Date: 08-10-2007
KLP

[1] AIR 1938 Madras 565